

900 KAR 6:070. Certificate of need considerations for formal review.

RELATES TO: KRS 216B.010, 216B.090, 216B.990

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.040(2)(a)2 requires the cabinet to promulgate an administrative regulation establishing the criteria for issuance and denial of certificates of need. This administrative regulation establishes the requirements necessary for the consideration for formal review of applications for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6).

(2) "Days" means calendar days, unless otherwise specified

(3) "Formal review" means the review of an application for certificate of need which is reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which is reviewed for compliance with the review criteria set forth at KRS 216B.040 and in this administrative regulation.

(4) "Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.

(5) "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet's Certificate of Need Newsletter.

Section 2. Considerations for Formal Review. In determining whether to approve or deny a certificate of need, the cabinet's review of an application under formal review shall be limited to the considerations established in this section.

(1) Consistency with plans.

(a) To be approved, a proposal shall be consistent with the State Health Plan established in 900 KAR 5:020.

(b) In determining whether an application is consistent with the State Health Plan, the cabinet, in making a final decision on an application, shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the public notice of the application.

(c) In determining whether an application is consistent with the State Health Plan following a reconsideration hearing pursuant to KRS 216B.090 or a reconsideration hearing which is held by virtue of a court ruling, the cabinet shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the reconsideration decision.

(d) An application seeking to re-establish a licensed healthcare facility or service that was provided at the healthcare facility and which was voluntarily discontinued by the applicant shall be considered consistent with the State Health Plan under the following circumstances:

1. The termination or voluntary closure of the former healthcare service or facility:

a. Was not the result of an order or directive by the cabinet, governmental agency, judicial body, or other regulatory authority;

b. Did not occur during or after an investigation by the cabinet, governmental agency, or other regulatory authority;

c. Did occur while the facility was in substantial compliance with applicable administrative regulations and was otherwise eligible for relicensure;

d. Was not an express condition of any subsequent certificate of need approval; and
e. Did not occur less than twenty-four (24) months prior to the submission of the application to re-establish;

2. The proposed healthcare service shall be provided within the same geographic service area as the former healthcare service;

3. The proposed healthcare facility shall be located within the same county as the former healthcare facility and at a single location; and

4. The application shall not seek to re-establish any type of bed utilized in the care and treatment of patients for more than twenty-three (23) consecutive hours.

(2) Need. The cabinet shall determine:

(a) If the applicant has identified a need for the proposal in the geographic service area defined in the application; and

(b) If the applicant has demonstrated that it is able to meet the need identified in the geographic service area defined in the application.

(3) Accessibility. The cabinet shall determine if the health facility or health service proposed in the application will be accessible in terms of timeliness, amount, duration, and personnel sufficient to provide the services proposed.

(4) Interrelationships and linkages. The cabinet shall determine:

(a) If the proposal shall serve to accomplish appropriate and effective linkages with other services, facilities, and elements of the health care system in the region and state; and

(b) If the proposal is accompanied by assurance of effort to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system.

(5) Costs, economic feasibility, and resource availability. The cabinet shall determine:

(a) If it is economically feasible for the applicant to implement and operate the proposal; and

(b) If applicable, if the cost of alternative ways of meeting the need identified in the geographic area defined in the application would be a more effective and economical use of resources.

(6) Quality of services.

(a) The cabinet shall determine if the applicant:

1. Is prepared to, and capable of undertaking and carrying out, the responsibilities involved in the proposal in a manner consistent with appropriate standards and requirements established by the cabinet; and

2. Has the ability to comply with applicable licensure requirements.

(b) Absence of an applicable licensure category shall not constitute grounds for disapproving an application. (36 Ky.R. 237; 807; eff. 10-21-2009; 40 Ky.R. 2860; 41 Ky.R. 500; 783; eff. 10-15-2014.)